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GREENBERG TRAURIG, LLP MET LIFE BUILDING 200 PARK AVENUE NEW YORK, NY 10166			EXAMINER DENNISON, JERRY B	
			ART UNIT	PAPER NUMBER
			2143	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/709,234

Applicant(s)

BOULTER ET AL.

Examiner

J. Bret Dennison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-15, 17-19, 21, 23-32, 35-39, 41-43, 46 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-15, 17-19, 21, 23-32, 35-39, 41-43, 46 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/27/07, 5/31/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Action is in response to the Amendment for Application Number 09/709,234 received on 27 June 2007.
2. Claims 1-9, 11-15, 17-19, 21, 23-32, 35-39, 41-43, 46, and 48 are presented for examination.

Claim Objections

3. Claims 21 and 23 are objected to because of the following informalities:
4. Claim 21 recites the limitation "said user indications" in line 5 of the claim. While it is understood that this limitation refers to the "indications" described in line 4 of the claim, there is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9, 11, 12, 15, 17-19, 21, 23-32, 35-36, 39, and 41-43, 46, and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by He et al. (U.S. 6,557,042).

5. Regarding claims 1 and 24, He et al. disclosed a multimedia summary generation system employing user feedback in which a multimedia server provides multimedia content, as well as summaries of the multimedia content, to one or more client computers. Each of the client computers is identified as being part of a particular group and summaries are generated for each group, the summaries including those portions of multimedia content that are most interesting to users of that group. The summaries are continually updated as each user is presented with the multimedia content and/or a summary of the content. Feedback from each user is collected and used to further refine the summary (He, col. 2, lines 20-40). He disclosed the data streams being stored in a database (He, col. 3, line 43).

Therefore, He disclosed a method executable by at least one server in communication with a user computer for selecting data streams for broadcast over a computer network to the user's computer in the form of a personalized internet radio station, the steps comprising:

accessing a database of data streams by said at least one server(He, col. 3, line 43, server accessing a database of media streams);

selecting at least one data stream from said database according to a selection method performed by said at least one server to create a playlist of data streams, said selection method performed by said at least one server being influenced by input received from the user that comprises user preferences for data streams to be broadcast but not controlled by the user's input so as to prevent on-demand broadcast of data streams to the user(He, col. 7, lines 25-30, He disclosed selecting data streams

based on user/group interests; col. 2, lines 20-40, He disclosed providing summaries that are continually updated as each user is presented with the multimedia content and/or a summary of the content. Feedback from each user is collected and used to further refine the summary, and therefore the teachings of He do not work like on-demand since the users are provided with the summary that the system creates based on the group user preferences);

transmitting said at least one selected data stream to the user computer via said network (He, col. 2, lines 30-35, He disclosed the multimedia content and/or summaries of data streams presented to the user);

receiving feedback via said network at said at least one server, said feedback expressing a preference of the user regarding said transmitted at least one data stream (He, col. 2, lines 35-40); and

updating said selection method using said preference of the user (He, col. 2, lines 35-40);

said updated selection method performed by said at least one server biases selection of data streams to be experienced at the user computer in accordance with said user preference and limits the user's control over selection of particular data streams from said database to prevent on-demand broadcast of data streams (He, col. 7, lines 25-30, He disclosed selecting data streams based on user/group interests; col. 2, lines 20-40, He disclosed providing summaries that are continually updated as each user is presented with the multimedia content and/or a summary of the content. Feedback from each user is collected and used to further refine the summary, and

therefore the teachings of He do not work like on-demand since the users are provided with the summary that the system creates based on the group user preferences).

Claim 24 includes limitations that are substantially similar to claim 1, further including said selection method taking into account excluded data streams indicated by the user as not to be transmitted. He clearly disclosed this functionality by providing the user with a button to indicate what portions are not important which clearly means that the user does not want these portions, i.e. to exclude them (He, Fig. 5, 330). The system of He takes into account these negative feedbacks to update the data stream (He, col. 12, lines 50-67). Therefore, claim 24 is rejected under the same rationale as claim 1.

6. Regarding claims 2 and 25, He disclosed the limitations, substantially as claimed, as described in claims 1 and 24, including:

performing said selection method by said at least one server to select a plurality of data streams from said database to generate a list of data streams to be transmitted to the user computer (He, col. 10, line 20, He disclosed a summary list);

transmitting by said at least one server one data stream from said list of data streams to the user computer (He, col. 10, line 20, He disclosed a summary list that dictates the order in which the data streams are presented to the user); and

performing said step of updating by said at least one server to update said list of data streams using said preference of the user (He, col. 10, lines 20-25, He disclosed the list being updated based on the user scores).

7. Regarding claims 3 and 26, He disclosed the limitations, substantially as claimed, as described in claims 1 and 24, including:

receiving by said at least one server via said network feedback expressing preferences from sources other than the user (He, col. 7, lines 40-45, He disclosed that an original presenter in the multimedia stream may identify what the segments should be, in the summary. See Abstract, He also disclosed that feedback is received from multiple users, each user being a source).

8. Regarding claims 4 and 27, He disclosed the limitations, substantially as claimed, as described in claims 3 and 26, including wherein the step of receiving preferences from sources other than the user further comprises:

receiving by said at least one server via said network feedback expressing preferences from the group consisting of other users, commercial radio stations, and lists of popular songs (See Abstract, He disclosed that feedback is received from multiple users).

9. Regarding claims 5 and 28, He disclosed the limitations, substantially as claimed, as described in claims 1 and 24, including:

informing the user generally regarding said database and said data streams (He, col. 8, lines 26-28, He disclosed providing all of the summary information to the user);

querying the user as to data stream preference and then performing said step of selecting at least one data stream from said database to generate an initial transmission list of data streams (He, col. 8, lines 28-29, Fig. 5, 328, 330, He disclosed the user providing feedback for particular sets of summary information);

said initial transmission list reflects general preferences of the user (He, col. 8, lines 29-31).

10. Regarding claims 6 and 29, He disclosed the limitations, substantially as claimed, as described in claims 1 and 24, including wherein said data streams are selected from the group consisting of songs and video (He, col. 3, line 40).

11. Regarding claims 7 and 30, He disclosed the limitations, substantially as claimed, as described in claims 2 and 25, including wherein said transmitted data stream is removed from said transmission list (He, col. 9, line 65 through col. 10, line 5, He disclosed filtering the data streams based on scores, which are generated from user feedback. Therefore, if the user's feedback puts the score below a threshold, the data stream is removed).

12. Regarding claims 8 and 31, He disclosed the limitations, substantially as claimed, as described in claims 7 and 30, including wherein said data stream removed from said transmission list is listed on a transmitted data stream list (He, col. 13, lines 35-45, He

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disclosed all user feedback being stored. Based on the user feedback and score of the stream, it can be determined if the stream has been removed and already transmitted).

13. Regarding claims 9 and 32, He disclosed the limitations, substantially as claimed, as described in claims 1 and 24, including wherein said step of transmitting one of said data streams further comprises transmitting said one of said data streams selected by said selection method, said selection method taking into account sound recording performance restrictions in data stream selection (He, col. 13, line 15, He disclosed providing copyright information).

14. Regarding claims 11 and 35, He et al. disclosed a multimedia summary generation system employing user feedback in which a multimedia server provides multimedia content, as well as summaries of the multimedia content, to one or more client computers. Each of the client computers is identified as being part of a particular group and summaries are generated for each group, the summaries including those portions of multimedia content that are most interesting to users of that group. The summaries are continually updated as each user is presented with the multimedia content and/or a summary of the content. Feedback from each user is collected and used to further refine the summary (He, col. 2, lines 20-40). He disclosed the data streams being stored in a database (He, col. 3, line 43).

Therefore, He disclosed a system for selecting data streams for broadcast over a computer network to a user computer, comprising:

At least one server connected to a computer network, said computer network connected to the user computer(He, col. 2, lines 18-23);

a database of media content data streams, said database available to said computer network (He, col. 3, lines 42-47);

a data stream controller coupled to said at least one server, said data stream controller transmitting media content data streams to said user computer according to a selection program performed by the at least one server (He, col. 2, lines 254-35, He disclosed transmitting the data streams according to group interests);

said selection program used in selecting media content data streams for transmission to the user computer via said data stream controller, said selection program receiving feedback via said computer network indicating a preference corresponding to at least on of the media content data streams from the user, said selection program performed by said at least one server being influenced but not controlled by said user preference, said selection program using said user preferences to bias selection of data streams to be experienced at the user computer and limiting the user's control over selection of data streams from said database to prevent on-demand selection of a particular data stream by said user (He, col. 7, lines 25-30, He disclosed selecting data streams based on user/group interests; col. 2, lines 20-40, He disclosed providing summaries that are continually updated as each user is presented with the multimedia content and/or a summary of the content. Feedback from each user is collected and used to further refine the summary, and therefore the teachings of He

do not work like on-demand since the users are provided with the summary that the system creates based on the group user preferences).

Claim 35 includes limitations that are substantially similar to claim 11, further including said selection program taking into account excluded data streams indicated by the user as not to be transmitted. He clearly disclosed this functionality by providing the user with a button to indicate what portions are not important which clearly means that the user does not want these portions, i.e. to exclude them (He, Fig. 5, 330). The system of He takes into account these negative feedbacks to update the data stream (He, col. 12, lines 50-67). Therefore, claim 35 is rejected under the same rationale.

15. Regarding claims 12 and 36, He disclosed the limitations, substantially as claimed, as described in claims 11 and 35, including wherein said computer network comprises the Internet (He, Fig. 1, 110).

16. Regarding claims 15 and 39, He disclosed the limitations, substantially as claimed, as described in claims 11 and 35, including wherein said user interface comprises an electronic media player (Fig. 5, 302).

17. Regarding claims 17 and 41, He disclosed the limitations, substantially as claimed, as described in claims 11 and 35, including wherein said selection program creates a list of data streams for transmission to the user (He, col. 10, lines 20-25).

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18. Regarding claims 18 and 42, He disclosed the limitations, substantially as claimed, as described in claims 17 and 41, including wherein said selection program modifies said list of data streams for transmission to the user according to said user preference (He, col. 10, lines 20-25).

19. Regarding claims 19 and 43, He disclosed the limitations, substantially as claimed, as described in claims 11 and 35, including:

said data stream controller transmitting said data streams in compliance with applicable copyright law (He, col. 13, line 15).

20. Regarding claims 21 and 46, He et al. disclosed a multimedia summary generation system employing user feedback in which a multimedia server provides multimedia content, as well as summaries of the multimedia content, to one or more client computers. Each of the client computers is identified as being part of a particular group and summaries are generated for each group, the summaries including those portions of multimedia content that are most interesting to users of that group. The summaries are continually updated as each user is presented with the multimedia content and/or a summary of the content. Feedback from each user is collected and used to further refine the summary (He, col. 2, lines 20-40). He disclosed the data streams being stored in a database (He, col. 3, line 43).

Therefore, He disclosed an apparatus for use in an Internet data stream transmission system, comprising:

at least one server configured to provide:

a rating tool, said rating tool receiving indications regarding a data stream played at a user computer by a media player, said user indications indicating a rating for said data stream (He, Fig. 5, 328, 330); and

a playlist generator, said playlist generator generating playlists identifying data streams to be experienced by a user using said media player, said playlist generator selecting data streams for inclusion on said playlist according to feedback received from said user, said feedback including said rating, said playlist generator biasing selection in accordance with said received feedback and limiting the user's control over data stream selection to prevent on-demand selection of a data stream by said user (He, col. 7, lines 25-30, He disclosed selecting data streams based on user/group interests; col. 2, lines 20-40, He disclosed providing summaries that are continually updated as each user is presented with the multimedia content and/or a summary of the content. Feedback from each user is collected and used to further refine the summary, and therefore the teachings of He do not work like on-demand since the users are provided with the summary that the system creates based on the group user preferences).

Claim 46 includes limitations that are substantially similar to claim 21, further including said rating tool enabling exclusion of said data stream. He clearly disclosed this functionality by providing the user with a button to indicate what portions are not important which clearly means that the user does not want these portions, i.e. to exclude them (He, Fig. 5, 330). The system of He takes into account these negative

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feedbacks to update the data stream (He, col. 12, lines 50-67). Therefore, claim 46 is rejected under the same rationale.

21. Regarding claims 23 and 48, He disclosed the limitations, substantially as claimed, as described in claims 22 and 47, including:

said playlist generator further selection data streams in accordance with applicable copyright law sound recording performance restrictions (He, col. 13, line 15).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 14, 37, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over He et al. (U.S. 6,557,042).

22. Regarding claims 13, 14, 37, and 38, He disclosed the limitations, substantially as claimed, as described in claims 11 and 35, including wherein said database contains audio data streams and video data streams (He, col. 3, line 40).

He did not explicitly state specific types of audio to use with the system.

This would have motivated one of ordinary skill to use well-known types of audio and video data streams. It was within the knowledge of one of ordinary skill in the art at

the time the invention was made that a song is a well-known form of audio and a music video is a well-known type of video. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the database of He as a song database holding song data streams or a music video database holding music video data streams since both songs and music videos were standard forms of audio and video that were streamed across the internet.

Response to Amendment

Applicant's arguments and amendments filed on 6/27/2007 have been carefully considered but they are not deemed fully persuasive.

In response to Applicant's arguments that He is different from the present invention "in which user input influences but does not control selection, and/or which recites a selection method which limits the user's control over selection of particular data streams to prevent on-demand broadcast of data streams", Examiner respectfully disagrees.

He does not allow users to select specific data streams. He provides a summary of data streams that is biased according to user preferences of the group. Since He only provides a summary and not items chosen by a user, He does not provide on-demand service. Therefore, user's control of the selection is limited, as required by the claimed invention.

In response to Applicant's arguments that "He fails to teach, suggest or disclose the selection performed in claims 24, 35, and 46, which takes into account user input

indicating one or more data streams that are to be excluded from being selected for transmission to the user", Examiner respectfully disagrees.

As shown in the above rejection, the user provides either positive or negative feedback. As explained by Applicant, the negative feedback option allows the user to indicate what portions of the data stream "is not important". As pointed out in the rejection, the teachings of He "takes into account" this negative feedback (in which the user does not want to see this portion of the stream, i.e. exclude it) to update the data stream being sent to the user. Therefore, He disclosed the limitations as claimed.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are

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applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. B. D.
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